

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

v.

This Document Relates To:

All Cases

MDL No. 2419

Master Docket: 1:13-md-2419-RWZ

**LIBERTY INDUSTRIES, INC.'S MOTION FOR STAY OF PROCEEDINGS**

Defendant, Liberty Industries, Inc. ("Liberty"), hereby moves, in accordance with the Settlement and Release Agreement, executed by Paul D. Moore ("NECC Trustee"), as the bankruptcy trustee in the case *In re: New England Compounding Pharmacy, Inc.*, Case No. 12-19882 pending in the U.S. Bankruptcy Court for the District of Massachusetts ("Bankruptcy Case"), Liberty, and Liberty's insurer, Great American E&S Insurance Company ("Great American"), for entry of an order staying actions in this multidistrict litigation ("MDL Proceedings") as to Liberty. In support of this motion, Liberty states the following:

1. Liberty built certain portions of three cleanrooms for NECC and/or Ameridose at 697 Waverly Street, Framingham, Massachusetts in 2005, 2006, and 2008. Liberty has been named as a defendant in numerous lawsuits asserting claims against it and seeking damages for injuries arising from the alleged contamination of certain lots of injectable methylprednisolone acetate compounded at and distributed by NECC. Liberty denies any liability for the claims asserted against it. Most, if not all, of these lawsuits have been consolidated in these MDL Proceedings.

2. In light of the substantial expense, uncertainties, and risk inherent in protracted litigation, Liberty and its insurer, Great American, have entered into the Settlement and Release Agreement. The NECC Trustee is seeking approval of the Settlement and Release Agreement in the Bankruptcy Case.

3. The Settlement and Release Agreement provides that Liberty will seek a stay of these MDL Proceedings as to it.

4. In accordance with the Settlement and Release Agreement, Liberty requests that the Court enter an order staying these MDL Proceedings and limiting discovery therein with respect to Liberty. Specifically, Liberty requests that such order provide for:

- (a) a prohibition against any party to the MDL Proceedings seeking dispositive relief;
- (b) a prohibition against any party to the MDL Proceedings seeking any form of prejudgment security, including, but not limited to, any attachments, injunctions, writs or orders of any nature with regard to Liberty; and
- (c) the permissibility of discovery against Liberty, but only to the extent the discovery is relevant to the prosecution, or defense, of claims against defendants other than Liberty.

5. The stay requested herein will terminate upon the earlier of the Plan Effective Date or the Termination Date, as those terms are defined in the Settlement and Release Agreement.

6. The relief requested herein is in the interests of the parties and judicial economy as it will preserve the benefits of the Settlement and Release Agreement without impeding the progress of the remaining actions in the MDL Proceedings that have not settled, thereby

obviating the need for further litigation against Liberty in these MDL Proceedings and relieving the parties of the related burden and expense.

7. The NECC Trustee, the Plaintiffs' Steering Committee appointed in these MDL Proceedings ("PSC"), and the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case ("Creditors' Committee") each support entry of the stay requested herein.

Accordingly, for all of the foregoing reasons, and with the support of the NECC Trustee, the PSC, and the Creditors' Committee, Liberty respectfully requests that this Court (1) grant this motion; and (ii) enter an order staying these MDL Proceedings, and limiting discovery therein, with respect to Liberty as set out above.

Respectfully submitted,  
LIBERTY INDUSTRIES, INC.,  
By its attorneys,

/s/ Peter G. Hermes

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Dated: April 30, 2015

**CERTIFICATE OF SERVICE**

Pursuant to Local Rules 5.2(b)(2) and 5.4 of the Local Rules of the United States District Court for the District of Massachusetts, I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent by first-class mail to those indicated as non-registered participants, if any, on April 30, 2015.

/s/ Peter G. Hermes

Peter G. Hermes